

# DECLARATION OF EMERGENCY

## Department of Wildlife and Fisheries Wildlife and Fisheries Commission

### Mullet Harvest (LAC 76:VII.343)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on February 21, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule. This emergency rule supersedes the declaration of emergency published in the September 1995 *Louisiana Register*.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishing**

#### **§343. Rules for Harvest of Mullet**

##### **A. Seasons**

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

##### **B. Commercial Taking**

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of 1,200 feet or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

##### **E. Permits**

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following alternative method.

c. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed

to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

i. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

ii. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

iii. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

iv. The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

v. The CPA shall prepare a financial statement depicting and listing separately applicant's total earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

vi. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

vii. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

viii. The Alternative Method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

ix. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

d. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the 10th of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

F. General Provisions. Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or 306. G. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:

Glynn Carver  
Chairman